4164-01-P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. FDA-2013-N-1429]

Agency Information Collection Activities; Submission for Office of Management and Budget Review; Comment Request; Guidance for Industry on Registration of Human Drug Compounding Outsourcing Facilities Under Section 503B of the Federal Food, Drug, and Cosmetic Act

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing that a proposed collection of information has been submitted to the Office of Management and Budget (OMB) for review and clearance under the Paperwork Reduction Act of 1995 (the PRA).

DATES: Fax written comments on the collection of information by [INSERT DATE 30 DAYS AFTER DATE OF PUBLICATION IN THE FEDERAL REGISTER].

ADDRESSES: To ensure that comments on the information collection are received, OMB recommends that written comments be faxed to the Office of Information and Regulatory Affairs, OMB, Attn: FDA Desk Officer, FAX: 202-395-7285, or emailed to oira_submission@omb.eop.gov. All comments should be identified with the title. Also include the FDA docket number found in brackets in the heading of this document.

FOR FURTHER INFORMATION CONTACT: FDA PRA Staff, Office of Operations, Food and Drug Administration, 8455 Colesville Rd., COLE-14526, Silver Spring, MD 20993-0002, PRAStaff@fda.hhs.gov.

SUPPLEMENTARY INFORMATION: In compliance with 44 U.S.C. 3507, FDA has submitted the following proposed collection of information to OMB for review and clearance.

Guidance for Industry on Registration of Human Drug Compounding Outsourcing Facilities Under Section 503B of the Federal Food, Drug, and Cosmetic Act; Availability

In the Federal Register of December 4, 2013 (78 FR 72899), FDA announced the availability of a draft guidance for industry entitled "Registration for Human Drug Compounding Outsourcing Facilities Under Section 503B of the Federal Food, Drug, and Cosmetic Act." The guidance is being issued to implement provisions added to the Federal Food, Drug, and Cosmetic Act (the FD&C Act) by the Drug Quality and Security Act (DQSA), which created a statutory category of "outsourcing facilities" that compound human drugs. Section 503B of the FD&C Act (21 U.S.C. 353b) allows compounders to register with FDA as outsourcing facilities. Drug products compounded in an outsourcing facility can qualify for exemptions from the FDA approval requirements in section 505 of the FD&C Act (21 U.S.C. 355) and the requirement to label products with adequate directions for use under section 502(f)(1) of the FD&C Act (21 U.S.C. 352(f)(1)) if the requirements in section 503B are met. The guidance discusses the process for registration of outsourcing facilities.

Under the guidance, facilities that elect to register must submit the following registration information to FDA for each facility:

- Name of the facility;
- place of business;
- unique facility identifier;
- point of contact email address and phone number;

- whether the facility intends to compound drugs that appear on FDA's drug shortage list in effect under section 506E of the FD&C Act (21 U.S.C. 356e); and
- an indication of whether the facility compounds from bulk drug substances, and if so, whether it compounds sterile or nonsterile drugs from bulk drug substances.

After initial registration, outsourcing facilities that wish to remain an outsourcing facility must re-register annually between October 1and December 31of each year. Registration information should be submitted to FDA electronically using the Structured Product Labeling (SPL) format and in accordance with section IV of the FDA guidance entitled "Providing Regulatory Submissions in Electronic Format--Drug Establishment Registration and Drug Listing." In the draft guidance issued on December 4, 2013, FDA described an alternative interim registration mechanism for use after initial passage of the DQSA and until September 30, 2014. The final guidance specifies the use of the SPL format for all registrations. Under the final guidance, outsourcing facilities may request a waiver from the SPL electronic submission process by submitting a written request to FDA explaining why the use of electronic means is not reasonable for the person requesting the waiver.

In response to the December 4, 2013, Federal Register notice, FDA received nine comments on the draft guidance, several of which raised issues pertaining to the information collection provisions in the draft guidance. The four primary issues raised are addressed below.

(Issue 1) Several commenters noted that the final guidance should clarify what product information will be included on the public list of registered outsourcing facilities required under section 503B(b)(1)(B)(ii) of the FD&C Act. Specifically, page 4, lines 133-134, of the draft guidance state that "information collected from the outsourcing facility registration, as well as certain product information, will be published in a list" authorized under section

503B(b)(1)(B)(ii) of the FD&C Act. The commenters requested assurances that confidential information submitted in product reports would remain confidential and not be posted on the Web. Other commenters requested clarification about how often the information will be updated.

(Response) FDA has clarified the guidance. Specifically, the guidance now reads: "Section 503B(b)(1)(B)(ii) of the FD&C Act requires FDA to publish on the Internet a list of registered outsourcing facilities that includes the name of each registered outsourcing facility, the state in which it is located, whether the facility compounds from bulk drug substances and whether such compounding from bulk drug substances is for sterile or non-sterile drugs. FDA will publish the information required, as well as the date of registration as an outsourcing facility and certain publicly disclosable information related to past FDA inspections and compliance actions. FDA intends to update the list of registered outsourcing facilities weekly."

Some of the commenters may have been confusing disclosure of registration information with disclosure of proprietary information required to be reported under section 503B(b)(2) of the FD&C Act. That provision specifies that, upon initially registering as an outsourcing facility, once during the month of June of each year, and once during the month of December of each year, each facility that registers with the Secretary of Health and Human Services as an outsourcing facility shall submit to the Secretary a report providing certain information about the drugs that were compounded by the facility during the previous 6-month period. Unlike section 503B(b)(1), section 503B(b)(2) of the FD&C Act does not require that information reported be posted and specifies that reports submitted under the provision shall be exempt from inspection unless the Secretary finds that such an exemption would be inconsistent with the protection of the public health (section 503B(b)(2)(C) of the FD&C Act). FDA intends to address product

reporting information in a separate guidance, "Electronic Product Reporting for Human Drug Compounding Outsourcing Facilities Under Section 503B of the FD&C Act." At this time, FDA does not intend to routinely disclose such information.

(Issue 2) Another commenter noted that all registration information from the outsourcing facility should be made public using the SPL format. The commenter suggested FDA obtain and make publicly available the following information: Name/license number of supervising pharmacist(s), an indicator of compliance registration or date of first and last registration, and a link to FDA disciplinary actions and to a list of recalled products for that outsourcing facility.

(Response) The list of registered outsourcing facilities includes most of the information that the commenter suggested, including each facility's date of registration as an outsourcing facility and any action FDA has taken based on the most recent inspection. FDA publishes drug product recalls in its weekly Enforcement Report, which includes a description of the products subject to the recall. The commenter can check the Enforcement Report to view drug products that have been recalled. FDA does not include the name/license number of the supervising pharmacist because section 503B of the FD&C Act does not require facilities to provide this information to FDA when registering. This information is not in SPL format because FDA includes information in this list that is not captured in SPL, such as FDA regulatory actions.

(Issue 3) One commenter requested insight on how FDA intends to communicate with industry those facilities that had previously registered as human drug compounders before the implementation of section 503B and those that are now registering under section 503B of the FD&C Act.

(Response) FDA has made available on the Internet a list of the facilities that have registered under section 503B of the FD&C Act as outsourcing facilities. FDA does not have a

list of facilities that had previously registered as human drug compounders before section 503B of the FD&C Act was enacted as there was no category of registered human drug compounder before this. Some human drug compounding facilities may have registered prior to the enactment of section 503B as human drug manufacturers under section 510 of the FD&C Act (21 U.S.C. 360). A list of all firms that are registered as manufacturers under section 510 is available to the public on FDA's Drug Establishments Current Registration Site, which is separate from the list of outsourcing facilities that have registered under section 503B of the FD&C Act.

(Issue 4) Another commenter noted that FDA should define what would constitute an undue burden justifying the granting of a waiver from the submission of registration information electronically.

(Response) Section 503B(b)(3) of the FD&C Act specifies the standard FDA is to use to determine whether a waiver should be granted. FDA may grant a waiver if it finds that "use of electronic means is not reasonable for the person requesting the waiver." FDA does not anticipate many instances in which electronic submission of registration information will not be reasonable for the person requesting the waiver, because the information requested is minimal, and the electronic system for submitting the information is an Internet-based system accessible to all firms seeking to register. Because human drug compounders are not currently required to register and report as outsourcing facilities, it is difficult to anticipate the number of outsourcing facilities that will participate in the process.

As a result of comments received on the "Draft Guidance for Industry on Fees for Human Drug Compounding Outsourcing Facilities Under the Federal Food, Drug, and Cosmetic Act," FDA has increased its estimates of the number of outsourcing facilities that are subject to each

guidance. We now estimate that 50 outsourcing facilities will register and pay establishment fees, and we have adjusted the other estimates in the table (except for the "average burden per response") accordingly.

We estimate that 50 outsourcing facilities ("number of respondents" and "total annual responses" in table 1, row 1) will annually submit to FDA registration information using the SPL format as specified in the guidance, and that preparing and submitting this information will take 4.5 hours per registrant ("average burden per response" in table 1, row 1). We expect to receive no more than one waiver request from the electronic submission process annually ("number of respondents" and "total annual responses" in table 1, row 2), and that each request should take 1 hour to prepare and submit to us ("average burden per response" in table 1, row 2).

FDA estimates the burden of this collection of information as follows:

Table 1.--Estimated Annual Reporting Burden[1]

Compounding Outsourcing Facility	No. of Respondents	No. of Responses per Respondent	Total Annual Responses	Average Burden per Response	Total Hours
Electronic Submission of Registration Information Using SPL Format	50	1	50	4.5	225
Waiver Request From Electronic Submission of Registration Information	1	1	1	1	1
Total					226

[1] There are no capital costs or operating and maintenance costs associated with this collection of information.

Dated: August 21, 2014.

Peter Lurie,

Associate Commissioner for Policy and Planning.

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